

## APPENDIX “A”

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UNITED STATES DISTRICT COURT



SOUTHERN DISTRICT OF TEXAS  
BROWNSVILLE DIVISION

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### ORDER

In this division, a practice has developed of filing motions to suppress without alleging specific facts that form the basis for the motion. All pretrial motions, including motions to suppress, must comply with Local Criminal Rule 12 (Criminal Pretrial Motion Practice). Motions to suppress not complying with Local Rule 12 will be considered waived. The Court will not entertain unsupported pretrial motions.

Local Rule 12.1 instructs counsel to follow Federal Rules of Criminal Procedure Rule 12 “to ensure consistent and efficient practice before this Court. Local Rule 12.2 outlines the form of a pretrial motion. Most importantly, the rule specifies that:

A pretrial motion shall be in writing and state specifically the basis for the motion. The motion shall be supported by a statement of authority....If the motion presents issues of fact, it shall be supported by affidavit or declaration which sets forth with particularity the material facts at issue.

The rule is sufficiently clear and needs no further explanation. All motions to suppress not complying with the requirements of form will be considered waived pursuant to Rule 12.1.

Local Rule 12 is supported by Fifth Circuit precedent. In *United States v. Harrelson*, 705 F.2d. 733, 737 (5th Cir. 1983), the Fifth Circuit addressed this issue and declared that “[e]videntiary hearings are not granted as a matter of course, but are held only when the defendant alleges sufficient facts which, if proven, would justify relief.” (citations omitted). “Factual allegations set forth in the defendant's motion, including any accompanying affidavits, must be sufficiently definite, specific, detailed, and nonconjectural, to enable the court to conclude that a substantial claim is presented.” *Id.* (quotations omitted). “General or

conclusionary assertions, founded upon mere suspicion or conjecture, will not suffice.” *Id.* (citing 3 C. WRIGHT, FEDERAL PRACTICE AND PROCEDURE: CRIMINAL 2D, § 675 (1982)).

Fifth Circuit precedent and the Local Rules establish that motions to suppress must allege specific facts. Cursory motions filed to “test” the constitutionality of statements which may or may not have been made do not allege sufficient facts to warrant an evidentiary hearing. A motion to suppress is not the proper vehicle for determining whether a defendant made statements to law enforcement; what statements may have been made; or the circumstances under which they may have been made. “Hearings on motions to suppress are not discovery proceedings, but are instead designed for the presentation of evidence in support of factual allegations which, if proved, would justify the relief sought.” *Id.* at 738. There are other more efficient methods of obtaining the relevant information for discovery purposes.

The Federal Rules of Criminal Procedure provide methods of obtaining discoverable information. Defense counsel and the United States Attorney's Office alike should follow the letter and the spirit of the Federal Rules of Criminal Procedure, particularly Rules 12 and 16. Should the government fail to meet its obligations under the applicable discovery rules, defendants and defense counsel will address the matter with the Magistrate Judge in the form of a motion to compel discovery.

To recap, the Court will not entertain conjectural or conclusionary motions to suppress. The Court will hold evidentiary hearings on motions to suppress conforming with Local Rule 12 and Fifth Circuit precedent; all other motions will be considered waived, and an evidentiary hearing will not be held. Moreover, the United States Attorney's Office will comply with the Federal Rules of Criminal Procedure, so that defendants will have access to all files containing the statements made by a defendant. Via such access, defendants will have the ability to articulate a motion to suppress conforming with Fifth Circuit precedent, the Local Rules, and this memorandum. All motions should include certificates of conference,

certificates of service, and a proposed order.

Signed this 3<sup>rd</sup> day of June, 2004.

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Andrew S. Hanen  
United States District Judge